

**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

-----X	
JEOFFREY L. BURTCH, CHAPTER 7	:
TRUSTEE, FACTORY 2-U STORES, INC., <i>et</i>	:
<i>al.</i> ,	:
	:
Plaintiff,	:
	:
v.	:
	:
MILBERG FACTORS, INC., CAPITAL	:
FACTORS, INC., THE CIT	:
GROUP/COMMERCIAL SERVICES, INC.,	:
GMAC COMMERCIAL FINANCE LLC,	:
HSBC BUSINESS CREDIT (USA) INC.,	:
ROSENTHAL AND ROSENTHAL, INC.,	:
STERLING FACTORS CORPORATION,	:
WELL FARGO CENTURY INC.,	:
	:
Defendants.	:
	:
-----X	

**DEFENDANT THE CIT GROUP/COMMERCIAL SERVICES, INC.'S
MOTION TO DISMISS THE COMPLAINT**

Defendant The CIT Group/Commercial Services, Inc., through its undersigned attorneys, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, moves this Court to dismiss the Complaint with prejudice in this action. The grounds for this Motion, which are more fully developed in the accompanying Memorandum of Law in Support of Defendant The CIT Group/Commercial Services, Inc.'s Motion to Dismiss the Complaint, include plaintiff's failure to state a claim under Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, and the Donnelly Act, N.Y. Gen. Bus. L § 340, for boycotting and price fixing.

For these reasons, and as further set forth in the accompanying memorandum of law, the Complaint should be dismissed in its entirety with prejudice.

Dated: December 14, 2007

BLANK ROME LLP

By: /s/ David K. Sheppard
Michael DeBaecke (ID No. 3186)
David K. Sheppard (ID No. 4149)
Chase Manhattan Centre
1201 Market Street, Suite 800
Wilmington, DE 19801
Telephone: (302) 425-6400

and

PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP

Robert A. Atkins
Daniel H. Levi
Robin D. Fineman

1285 Avenue of the Americas
New York, New York 10019-6064
(212) 373-3000

*Attorneys for Defendant The CIT
Group/Commercial Services Inc.*

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

-----	X	
JEOFFREY L. BURTCH, CHAPTER 7	:	Civil Action No. 1:07-cv-00556-***-LPS
TRUSTEE, FACTORY 2-U STORES, INC., <i>et</i>	:	
<i>al.</i> ,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
MILBERG FACTORS, INC., CAPITAL	:	
FACTORS, INC., THE CIT	:	
GROUP/COMMERCIAL SERVICES, INC.,	:	
GMAC COMMERCIAL FINANCE LLC,	:	
HSBC BUSINESS CREDIT (USA) INC.,	:	
ROSENTHAL AND ROSENTHAL, INC.,	:	
STERLING FACTORS CORPORATION,	:	
WELL FARGO CENTURY INC.,	:	
	:	
Defendants.	:	
	:	
-----	X	

[PROPOSED] ORDER

AND NOW, this ____ day of _____, 2007, having considered Defendant The CIT Group/Commercial Services, Inc.'s Motion to Dismiss and the responses filed thereto, the Motion is GRANTED in its entirety, and the Complaint is dismissed with prejudice.

AND IT IS SO ORDERED.

J.